

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUAN MORALES)	
Claimant)	
VS.)	
)	Docket Nos. 208,815 & 219,228
MONFORT, INC)	
Respondent)	
Self-Insured)	

ORDER

Claimant requested Appeals Board review of the preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Kenneth S. Johnson on March 31, 1997.

ISSUES

The single issue before the Appeals Board for review is whether claimant gave respondent timely notice of accident as required by K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The Administrative Law Judge denied claimant's request for medical treatment for alleged work-related injuries to his left leg, left knee, and right shoulder. The Administrative Law Judge found claimant failed to give respondent notice of the accident. The current notice statute requires the claimant to give notice of the accident to the respondent within 10 days thereof or show "just cause" for failure to give the required 10-day notice. See K.S.A. 44-520. The claimant urges the Appeals Board to reverse the Administrative Law Judge's decision, arguing the preliminary hearing record proves claimant gave notice to the respondent within 10 days of the accident which caused injury to claimant's right shoulder. Claimant does not argue he had "just cause" for failure to give the required 10-day notice in reference to his right shoulder injury. Claimant further alleges his left leg injury is a

natural consequence of an earlier work-related right knee injury. Therefore, claimant is arguing he was not required to give notice of an accident that caused his left leg injury.

Before the pertinent facts of this multiple docketed case can be understood, the Appeals Board finds a brief history of the case is required to be recited. The claimant originally filed an application for hearing on January 25, 1996, alleging a single date of accident of August 31, 1995, and specifying an injury to his right lower extremity which was assigned Docket No. 208,815. On February 28, 1996, claimant filed an amended application for hearing with the same date of accident but expanding his alleged injuries to his right leg, left leg, back, and right shoulder. Another application for hearing was filed by the claimant on April 24, 1996, which changed the date of accident from August 31, 1995 to July 14, 1995. A preliminary hearing was then held on June 26, 1996, regarding claimant's alleged single date of accident of July 14, 1995. As a result of that preliminary hearing, Administrative Law Judge John L. Frobish ordered respondent to provide medical treatment for claimant's injury through Gary M. Kramer, M.D., an orthopedic surgeon in Garden City, Kansas. The respondent timely appealed that preliminary hearing Order to the Appeals Board. Thereafter, the Appeals Board in an Order dated September 20, 1996, affirmed the Administrative Law Judge's preliminary hearing Order. Following that preliminary hearing Order, Dr. Kramer performed arthroscopic surgery to repair a torn medial meniscus in claimant's right knee. The preliminary hearing record contains medical reports from Dr. Kramer that he treated claimant only for a right knee injury.

Following claimant's surgery, he returned to work for the respondent performing a repetitive job using both hands and a knife to remove the pancreas from cattle. On December 13, 1996, claimant filed another application for hearing alleging injuries to his right shoulder, right arm, and right hand for a date of accident from August 29, 1990 with a series of microtraumas continuing and ending in an identifiable injury on December 2, 1996, and continuing each and every day worked thereafter. This claim was assigned Docket No. 219,228. Subsequently, claimant filed in both docketed numbers an application for preliminary hearing dated February 11, 1997, requesting medical treatment for his left leg, left knee, and right shoulder.

At the March 19, 1997, preliminary hearing which is the subject of this appeal, claimant testified his left leg was symptomatic from the knee down because he had to alter the weight to the left leg as a result of the right leg injury. Claimant testified he had symptoms in his right shoulder, right arm, and right hand because of his repetitive work activities. He testified that the symptoms in his right shoulder, right arm, and right hand developed on a day certain, December 2, 1996. Claimant further alleged he went to the respondent's infirmary on December 2, 1996, and on other occasions and reported these symptoms to a person named Bob. Claimant also testified he requested, at that time, to see a doctor but the respondent refused his request.

With respect to claimant's left leg injury, he does not contend he notified the respondent of the problem but indicates the problem is a natural consequence of his work-related right leg injury. Respondent had Rozanna Garcia, its workers compensation

coordinator, testify at the preliminary hearing. Ms. Garcia established that the respondent's medical records did not indicate claimant reported an injury to his right shoulder on December 2, 1996. Furthermore, Ms. Garcia testified respondent did not employ a person named Bob in their health care service department.

In denying claimant's request for preliminary benefits, the Administrative Law Judge made a specific finding that claimant's testimony was not credible. The Appeals Board finds that some deference should be given to the Administrative Law Judge's findings in this regard as he had the opportunity to personally observe the witnesses who testified. Thus, the Administrative Law Judge was in the best position to assess the witnesses' credibility. Therefore, the Appeals Board finds, giving some deference to the Administrative Law Judge's conclusions, that the finding of the Administrative Law Judge that claimant failed to give timely notice of accident in regard to claimant's alleged right shoulder injury should be affirmed.

As previously noted, claimant does not claim he sustained a separate accident causing his left leg symptoms. Instead, claimant contends his left leg injury is a natural consequence of his work-related right leg injury. Accordingly, notice of accident is not an issue in reference to claimant's left leg injury claim. However, the Appeals Board finds that, without supporting medical evidence, claimant has failed to prove that it is more probably more true than not that his left leg complaints are related to his right leg injury.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Kenneth S. Johnson on March 31, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
Terry J. Malone, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director